

# CAMAC TO BE ABOLISHED

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Legal Briefings - By **George Durbridge**

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Among the economies proposed in its Budget for 2014-2015, the Commonwealth Government has announced that it will abolish a number of government bodies, including the Corporations and Markets Advisory Committee (**CAMAC**).

## SUMMARY

- CAMAC is a small body which has worked assiduously for over 35 years, under several names, to recommend technical and policy maintenance and improvement of companies and securities law.
- The Commonwealth Government has announced its intention to abolish CAMAC.
- Despite its merits, the Australian Law Reform Commission is no substitute for CAMAC as it lacks the specialist and practitioner expertise.

## CAMAC

CAMAC was established by the Formal Agreement between the Commonwealth and the States in 1978, which instituted the Co-operative Scheme, and put on a statutory basis by what is now the *Australian Securities and Investments Commission Act 2001*, initially as the Corporations and Securities Advisory Committee, and since 2002 as CAMAC.

CAMAC's members have all served part-time. They have been drawn from both government and the private sector, and have included many knowledgeable and distinguished practitioners, who provided much of their time for no charge, or for much less than it was worth. For many years, it was led by the late Professor Harold Ford. Initially it was funded and supported entirely by the Commission, but since 1991 it has had a staff (currently three employees), premises and an appropriation of its own, with some support services still being provided by ASIC. Recently, the annual appropriation has been about \$1 million.

CAMAC has issued at least one substantial report in every year of its existence, often two or three. Those reports invariably addressed difficult technical or policy issues, sometimes both. They have been a model of clear analysis and level-headed, practical reform. CAMAC has mostly worked on issues referred to it by Ministers, though it has undertaken valuable work on its own initiative.

The 1993 review of the regulation of collective investments (undertaken together with the Australian Law Reform Commission) was a major exercise referred to CAMAC by the then Minister and completed within 18 months, including issuing a discussion paper and a final report, which took into account a large number of submissions. That report analysed the deficiencies of the then prescribed interest provisions of the legislation, which were causing investors serious losses, and suggested workable replacements, which were cheaper to run and incorporated stronger structural safeguards for investors. It formed the basis of the *Managed Investments Act 1998*, which has been substantially successful. The safe and efficient administration of trillions of dollars of investors' funds depend on these provisions. When in 2011 the government asked CAMAC to advise again on collective investments, it saw no need to re-open the structural issues, and instead asked CAMAC to look at emerging issues concerning insolvency and transfer of management of collective investment schemes.

On the other hand, in 1990, CAMAC took the initiative in examining a large number of technical anomalies in the operation of Chapter 6 of the Corporations Law (the takeovers code) and both technical and policy issues in the compulsory acquisition provisions. Many of its recommendations were adopted in the simplification of Chapters 6 and 6A effected by the *Corporate Law Economic Reform Program Act 1999*. The annual cost savings to participants in takeovers from these reforms alone would well exceed the cost of operating CAMAC.

In December 2009, CAMAC proposed a number of very sensible reforms to the scheme of arrangement provisions in Part 5.1 of the Corporations Act. Unfortunately, the Government has not yet acted on these proposals.

Despite its merits, the Australian Law Reform Commission is no substitute for CAMAC: it lacks the specialist and practitioner expertise. If CAMAC did not exist, we would have had to invent it. If it ceases to exist, we will have to reinvent it.

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